

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

KIMBERLY CERVANTES,

Plaintiff,

CV-05-1496-ST

v.

FINDINGS AND  
RECOMMENDATION

STATE OF OREGON DEPARTMENT OF  
CORRECTIONS and PAUL WILSON,

Defendants.

STEWART, Magistrate Judge:

Plaintiff, Kimberly Cervantes (“Cervantes”) filed this action on September 27, 2005.

Cervantes alleges three claims for relief against her employer, the Oregon Department of Corrections (“ODOC”), and her supervisor, Sergeant Paul Wilson, for: (1) sexual harassment in violation of Title VII (First Claim); (2) unlawful employment practices under ORS Chapter 659A (Second Claim); and (3) battery (Third Claim).

ODOC has now filed a Motion to Dismiss in Part (docket #9), seeking dismissal of the Second and Third Claims based on sovereign immunity insofar as those claims are alleged

against ODOC. On December 2, 2005, Cervantes filed a Response to Defendant State of Oregon's Motion to Dismiss in Part (docket #19), in which she concedes both portions of ODOC's motion. Accordingly, the motion should be granted.

### **RECOMMENDATION**

For the reasons stated above, Oregon Department of Corrections's Motion to Dismiss in Part (docket #9) should be GRANTED and the Second and Third Claims for Relief against defendant Oregon Department of Corrections should be DISMISSED.

### **SCHEDULING ORDER**

Objections to the Findings and Recommendation, if any, are due **December 23, 2005**. If no objections are filed, then the Findings and Recommendation will be referred to a district court judge and go under advisement on that date.

If objections are filed, then a response is due within 10 days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will be referred to a district court judge and go under advisement.

### **NOTICE**

This Findings and Recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any Notice of Appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment.

DATED this 5<sup>th</sup> day of December, 2005.

s/ Janice M. Stewart \_\_\_\_\_  
Janice M. Stewart  
United States Magistrate Judge